

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MEDSCRIPT PHARMACY, LLC,)	
)	
Plaintiff,)	
)	Case No. 18-cv-5663
v.)	
)	
D&D PHARMA LTC, LLC,)	Honorable Robert W. Gettleman
)	
Defendant.)	JURY DEMANDED
)	
)	
D&D PHARMA LTC, LLC,)	
)	
Counter-Plaintiff)	
)	
v.)	
)	
MEDSCRIPT PHARMACY, LLC,)	
)	
Counter-Defendant)	

D&D PHARMA LTC, LLC'S CROSS-MOTION FOR SUMMARY JUDGMENT

Defendant D&D Pharma LTC, LLC, ("D&D") through its attorneys, hereby move for summary judgment against all claims of Plaintiff Medscript Pharmacy pursuant to Federal Rule of Civil Procedure 56. In support of its motion, Plaintiff states the following:

Plaintiff, MedScript Pharmacy, LLC, filed a complaint against D&D asserting the following federal and state causes of action based on D&D's use of MedScript as part of its service mark and trade name in connection with pharmacy services: Trademark Infringement, 15 U.S.C. §§ 1114-1117, Federal Unfair Competition and False Designation of Origin, 15 U.S.C. § 1125(A), Common Law Trademark Infringement, Common Law Unfair Competition and Deceptive Trade Practices Pursuant to 815 ILCS §§ 510/1, et seq. In order to prevail on any of

these claims, Plaintiff must establish that it has prior, superior rights in its use of the mark MedScript Pharmacy for pharmacy services. This Plaintiff cannot do.

The undisputed evidence establishes that D&D and its predecessors have continuously used MedScript for a myriad pharmacy services dating back to the early 1970s, several decades before Plaintiff ever existed or began using the Medscript Pharmacy mark. Under controlling law, D&D's superior prior rights in the MedScript mark trumps Plaintiff's junior user status and its two trademark registrations. To the extent that a likelihood of confusion has resulted from the parties' concurrent use, it is Plaintiff, as junior user of the mark, that has caused such confusion.

Accordingly, D&D is entitled to summary judgment on all of Plaintiff's federal and state claims and on its own counterclaims for declaratory judgment of non-infringement and for cancellation of Plaintiff's U.S. Trademark Registrations.

In support of this Motion, D&D has filed a Memorandum of Law in support of this motion and a Responsive Statement of Material Facts and Additional Statement of Material Facts, pursuant to Northern District of Illinois LR56.1.

Dated: October 23, 2019

Respectfully submitted,

D&D PHARMA LTC, LLC

By: /s/ Kevin Tottis
One of its Attorneys

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CERTIFICATE OF SERVICE

Kevin Tottis, an attorney, states that the foregoing **D&D Pharma LTC, LLC's Cross-Motion for Summary Judgment** was served electronically by transmission through the Court's CM/ECF Filing system, on October 23, 2019, upon:

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